



CALIFORNIA BOARD OF ACCOUNTANCY

2000 EVERGREEN STREET, SUITE 250
SACRAMENTO, CA 95815-3832
TELEPHONE: (916) 263-3680
FACSIMILE: (916) 263-3675
WEB ADDRESS: <http://www.dca.ca.gov/cba>



Initial Statement of Reasons

Hearing Date: May 20, 2005

BOARD OF ACCOUNTANCY
INITIAL STATEMENT OF REASONS

Hearing Date: May 20, 2005.

Subject Matter of Proposed Regulations: Practice Privileges, Disciplinary Guidelines.

Adopt Section 26 of Title 16 of the California Code of Regulations.

Specific Purpose:

This proposal would add Section 26 to provide an introduction to Article 4 of Title 16 related to practice privileges and to communicate that Article 4 implements Article 5.1 of the Accountancy Act (commencing with Business and Professions Code Section 5096) related to practice privileges.

Factual Basis/Rationale:

Legislation enacted in 2004 added Article 5.1, commencing with Business and Professions Code Section 5096, to the Accountancy Act. When Article 5.1 becomes operative on January 1, 2006, it will permit a qualified out-of-state CPA to practice in California without a California license by obtaining a practice privilege that is under the full regulatory authority of the Board ([Attachment A](#) provides the text of this legislation). Implementing regulations do not currently exist and are necessary to implement these new statutes. Adoption of Section 26 is necessary to introduce Article 4 of Title 16 related to practice privileges and to provide a context for the other regulations in Article 4 that follow.

To develop these regulations the Board organized its Practice Privilege Task Force which held a series of public meetings during the period July 2004 through March 2005. The Task Force considered practice privilege policy issues, proposed implementing regulations, and other related implementation issues. Interested parties, including representatives of the profession and a consumer group representative were active participants at Task Force meetings. At its meeting of January 20, 2005, the Task Force reviewed the draft regulations under consideration, and on January 21, 2005, made its recommendation to the Board. The Board concurred with the Task Force's recommendation and scheduled the language for a public hearing. (See [Attachment B](#) for the document summarizing the issues and transmitting the Task Force's recommendations to the Board.)

Adopt Section 27 of Title 16 of the California Code of Regulations.

Specific Purpose:

This proposal would add Section 27 to specify in regulations the qualifications for California practice privilege for an individual whose principal place of business is not in California and who holds a valid, current license to practice public accountancy issued in another state. Subsection (a) indicates an individual who holds a current, valid license from a state determined by the Board to have licensure requirements substantially equivalent to Section 5093 of the Business and Professions Code qualifies for California practice privilege. Subsection (b) specifies that an individual who has the education, examination, and experience qualifications that are substantially equivalent to qualifications for the California CPA license in Section 5093 of the Business and Professions Code would qualify for California practice privilege. Subsection (b) further specifies that this individual shall obtain an individual qualification evaluation of “substantial equivalency” from the National Association of State Board of Accountancy’s (NASBA) CredentialNet and report this on the Notification Form. Subsection (c) specifies that an out-of-state Certified Public Accountant who has held a current, valid license issued by any state for four of the last ten years qualifies for California practice privilege.

Factual Basis/Rationale:

In January 2006, qualified out-of-state licensees will have the option of obtaining a California practice privilege to practice public accountancy in California. Although Section 5096 of the Business and Professions Code provides the qualification requirements, the statute does not specify how an individual obtains an individual qualification of substantial equivalency for practice privilege.

Therefore, Section 27(b) specifies that the Board will accept individual qualification evaluations of substantial equivalency completed by the National Association of State Boards of Accountancy’s (NASBA) CredentialNet. Subsection (b) also specifies the process necessary to obtain the CredentialNet NASBA file number, which is required on the Notification Form.

The other provisions of Section 27 are necessary to clarify the qualification requirements for California practice privilege and include all of the relevant qualification provisions in one place.

Adopt Section 28 of Title 16 of the California Code of Regulations.

Specific Purpose:

This proposal would add Section 28 related to the Notification Form required to obtain a California practice privilege. Subsection (a) establishes the requirement that an individual seeking a practice privilege must submit a completed Notification Form. In

addition, subsection (a) provides that the form, available either in hard copy or electronically, will be identical in content, except for the signature block. Subsection (b) clarifies the license that is referenced in subdivision (e) of Section 5096 of the Business and Professions Code. Subsection (c) provides the language for the signature block on the electronic version of the Notification Form.

The hardcopy version of the form is included in Section 28.

Factual Basis/Rationale:

Adding Section 28 is necessary to establish the requirement for the reporting of the information and the agreements in the Notification Form. This Notification Form is the primary document for communicating an individual's qualifications for California practice privilege.

Subsection (a) establishes the requirement that completion of the Board's Notification Form in its entirety is required to obtain a California practice privilege. The individual can complete either the electronic version of the form or the paper version. Except for the signature block, both forms contain the same elements.

Subsection (b) specifies the license that is referenced in subdivision (e) of Section 5096 of the Business and Professions Code is the license issued by the state of the principal place of business for individuals who qualify for practice privilege under either subsection (b) or (c) of Section 27. Subsection (b) of Section 28 is necessary to indicate which state is the home state for purposes of complying with other practice privilege requirements, such as meeting the examination and continuing education requirements of the state in which the substantial equivalency is based.

Subsection (c) provides the electronic signature for the on-line Notification Form since its language differs slightly from the language in the hard copy form at the end of Section 28.

Adopt Section 29 of Title 16 of the California Code of Regulations.

Specific Purpose:

This proposal would add Section 29 to establish time frames for the commencement and expiration of the practice privilege. Subsection (a) provides for the commencement of the practice privilege and specifies that, except as provided in Section 30 or when prior Board approval is required pursuant to Section 32, the practice privilege commences when the notice is submitted to the Board electronically or on the postmark date of a Notification Form submitted by mail. Subsection (a) further indicates that when Board approval is required pursuant to Section 32, the practice privilege commences on the date it is approved by the Board.

Subsection (b) provides for the expiration of the practice privilege and indicates the practice privilege expires one year from the date the notification form is submitted to the

Board or on the date a subsequent form is submitted to the Board, whichever occurs first.

Factual Basis/Rationale:

Current regulations do not specify the term of the practice privilege. While subdivision (f) of Business and Professions Code Section 5096 indicates that the practice privilege expires one year from the date of the notice, the “date of the notice” is not defined. Subdivision (f) of Section 5096 also authorizes the Board to set a shorter period through the rulemaking process.

Section 29 is necessary to specify when the practice privilege begins both in those instances when the notice is submitted electronically and when it is submitted in hard copy form through the mail.

Section 29 is also necessary to specify when the practice privilege ends. In many instances the practice privilege would expire one-year from the date it begins. However, if a subsequent Notification Form is submitted before the current practice privilege is due to expire, the new practice privilege would commence on the date the new Notification Form is submitted, and the old practice privilege would be superseded. Since the statute does not provide for renewal of the practice privilege, this provision is necessary to facilitate holding a practice privilege without interruption for two or more consecutive years. Absent such a provision, an accidental violation of the notification requirement could occur if a new notification was not submitted on the day after the expiration date of the previously held practice privilege.

Adopt Section 30 of Title 16 of the California Code of Regulations.

Specific Purpose:

This proposal would add Section 30 to permit a “safe harbor” period for the submission of the practice privilege notification. Subsection (a) of Section 30 indicates that while notice is due on or before commencing practice, during the period January 1, 2006, through December 31, 2007, the individual shall not be deemed to be in violation of the practice privilege provisions if practice begins before submitting the Notification Form, provided the form is submitted within five business days after commencing practice. Subsection (a) further indicates that such an individual shall be deemed to have a practice privilege from the first day of practice in California. Subsection (b) provides for a fine of \$250 to \$5,000 for notifying the Board more than five days after practice commences. Section 30 also indicates that the factors listed in Section 95.3 should be considered in assessing fine amounts.

Factual Basis/Rationale:

During the discussion of the proposal, representatives of the profession communicated concern that unintentional violations could occur simply because people are unfamiliar

with the practice privilege requirements. The Board concluded that a brief “safe-harbor period” during the early years of the new requirements is necessary to address this concern and to facilitate compliance. Such a “safe harbor” provision would also allow time for firms to communicate with employees who are affected by the practice privilege provisions and monitor their compliance more effectively.

The fine provided for in subsection (b) is necessary to address those situations in which the safe harbor provision is violated. The range of fines provides for a broad range of possible offenses including not only late notification, but also repeated offenses, situations in which the individual has been contacted by the Board but has failed to comply, and other more serious concerns. The cross-reference to Section 95.3 is necessary to clarify that in assessing fine amounts the Board will give consideration to aggravating and mitigating circumstances such as the gravity of the violation, the good or bad faith of the person violating the provision, any history of previous violations, and evidence the violation was willful.

Adopt Section 31 of Title 16 of the California Code of Regulations.

Specific Purpose:

This proposal would add Section 31 to the Board’s regulations to indicate when the practice privilege fee as specified in Section 70(h) must be received by the Board and to establish penalties for failure to pay timely. The preamble indicates the fee must be received within 30 days of the date the Notification Form is submitted. Subsection (a) provides the fine range for individuals who fail to pay the practice privilege fee timely for the first time or attempt to pay the fee with a check that is subsequently dishonored. Subsection (b) provides the fine range for individuals who fail to pay the practice privilege fee timely for any subsequent occurrence or attempt to pay the fee with a check that is subsequently dishonored. Subsection (c) clarifies that an individual who is subject to a fine for failure to pay, or for attempting to pay with a dishonored check, is subject to an administrative suspension until the Board gives its approval for practice to resume.

Factual Basis/Rationale:

Adoption of Section 31 is necessary to establish time frames for payment of the practice privilege fee and to establish penalties for failure to pay the fee timely. Once the practice privilege notification is submitted to the Board, the fee must be received within 30-days. Failure to submit the notification fee timely places the individual in violation of subdivision (d) of Section 5096 of the Business and Professions Code.

The fine provided for in subsection (a) is necessary to address those situations in which the notification fee is not received timely or the check to pay the notification fee is dishonored. The range of fines is necessary to provide for a broad range of possible offenses including situations in which the individual has been contacted by the Board but has failed to comply and other more serious concerns. The cross-reference to

Section 95.3 is necessary to clarify that in assessing fine amounts the Board will give consideration to aggravating and mitigating circumstances such as the gravity of the violation, the good or bad faith of the person violating the provision, and evidence the violation was willful.

The fine provided in subsection (b) is necessary to address those situations in which an individual has failed to pay the notification fee timely or the check to pay the notification fee is dishonored more than once. The fine range provided in subsection (b) is higher than in subsection (a) because multiple occurrences of the same offense is viewed as more serious. The cross-reference to Section 95.3 is necessary to clarify that in assessing fine amounts the Board will give consideration to aggravating and mitigating circumstances such as the gravity of the violation, the good or bad faith of the person violating the provision, and evidence the violation was willful.

The administrative suspension referenced in subsection (c) is necessary to ensure only qualified individuals who have complied with all of the practice privilege requirements, including paying the fee timely, practice public accountancy in California. Therefore, the practice privilege may be administratively suspended for occurrences such as nonpayment of the notification fee. Once the suspension is resolved, the practice under the practice privilege may resume.

Adopt Section 32 of Title 16 of the California Code of Regulations.

Specific Purpose:

This proposal would add Section 32 to establish in regulations the conditions under which prior Board approval is needed for practice privilege. Subsection (a) speaks to conditions under which prior Board approval is necessary for the commencement of the practice privilege. Subsection (b) speaks to conditions under which prior Board approval is necessary for practice under an existing practice privilege to continue.

Subsection (c) lists the specific conditions requiring Board approval. Subsection (c) includes the conditions listed in paragraph (2) of subdivision (g) of Business and Professions Code Section 5096: conviction of a crime, discipline of a license or other authority to practice a profession, the occurrence of an investigation or proceeding involving the individual's professional conduct, and the entry of a civil judgment or arbitration award greater than \$30,000 related to the individual's professional conduct. Subsection (c) also adds three additional conditions: expiration of a previous practice privilege while under administrative suspension or with an unpaid fine, failure to satisfactorily respond to Board inquiry, and receipt of notification from the Board that prior approval is required before a new practice privilege can commence.

Paragraph (2) of subsection (c) indicates that Board approval is required if the individual held a license or other authority to practice that was disciplined or sanctioned. It then adds two exceptions: an action by a state board of accountancy in which the only sanction was a requirement that the individual complete specified continuing education

courses and the revocation of a license other than a revocation which occurs solely because of failure to complete continuing education or failure to renew.

Factual Basis/Rationale:

Current regulations do not specify the conditions under which prior Board approval is required before a new practice privilege can commence or an existing practice privilege can continue. Adoption of Section 32 is necessary to specify those conditions in the Board's regulations. Section 32 includes the conditions listed in subdivision (g) of Business and Professions Code Section 5096, along with the additions and exceptions added by the Board. This places in one location all of the conditions requiring Board approval for clarity and for ease of access by those seeking to obtain California practice privilege.

Section 32 adds three conditions requiring Board approval to the conditions listed in paragraph (2) of subdivision (g) of Business and Professions Code Section 5096. These conditions are proposed under the authority granted in paragraph (2)(E). It is the Board's view that the occurrence of these additional conditions may make the individual unfit to practice public accountancy in California. Should any of these conditions occur, it is necessary for the Board to review the issues and the individual's qualifications and affirmatively grant its approval before practice under the practice privilege can commence.

One of the conditions added by Section 32 is that prior Board approval is required if the individual previously held a practice privilege that expired under administrative suspension or with an unpaid fine. This is necessary because the occurrence of the event leading to an administrative suspension or a fine, if not resolved, may make the individual unqualified for a practice privilege. It is also necessary to prevent an individual from applying for a new practice privilege in order to avoid paying the fine or addressing the issue associated with the administrative suspension.

Section 32 also adds as a condition requiring prior Board approval that the individual failed to respond satisfactorily to Board inquiry. Paragraph (5) of subdivision (e) of Section 5096 mandates that a practice privilege holder respond to Board inquiry and cooperate in a Board investigation. Failure to do so indicates the individual may not be qualified for California practice privilege.

Section 32 also adds the condition that prior Board approval is required before practice can commence if the individual has been so notified by the Board. There may be instances in which the Board has concerns about an individual's fitness to practice and believes a review of the individual's qualifications should occur before practice under a new practice privilege begins.

In addition to adding three conditions requiring Board approval, the Board also added two exceptions pursuant to paragraph (3) of subdivision (g) of Business and Professions Code Section 5096. One exception is an action by a state board of accountancy in

which the only sanction was a requirement that the individual complete continuing education. It is the Board's view that when continuing education is the only sanction, the infraction was not sufficiently serious to require Board approval prior to the commencement of practice under a practice privilege.

The second exception involves the revocation of a license other than the license under which the individual qualifies for practice privilege solely because of failure to complete continuing education or failure to renew. This exception reflects the fact that some states revoke a license because of failure to complete continuing education or failure to renew. This revocation is primarily administrative and does not indicate the occurrence of a serious violation. It is the Board's view that in these instances prior Board approval should not be necessary before practice under a practice privilege can commence.

Adopt Section 33 of Title 16 of the California Code of Regulations.

Specific Purpose:

This proposal would add Section 33 to establish the requirement that changes in the information in the Notification Form be reported in writing to the Board within 30 days of the change. Section 33 also establishes a fine for failure to comply and indicates that the factors listed in Section 95.3 will be considered in assessing fine amounts.

Factual Basis/Rationale:

The information reported on the Notification Form bears on the individual's fitness to practice in California under a practice privilege. Any changes in the information may potentially disqualify the individual from holding the practice privilege. The information reported on the notification also provides a means to contact practice privilege holders. Dated or inaccurate information might hinder the Board's ability to regulate these individuals and protect California consumers. Adoption of Section 33 is necessary to address these problems by requiring that changes in the information in the Notification Form be reported to the Board. The 30-day time frame for reporting is consistent with similar reporting requirements for licensees, as indicated, for example, in Business and Professions Code Section 5063 and Section 3 of these regulations.

The fine provided for in subsection (b) is necessary to address those situations in which the reporting requirement is violated. A range of fines is necessary to provide for a range of possible factors that could be involved in the violation, including the significance of the information involved and whether it is reported voluntarily. The cross-reference to Section 95.3 is necessary to clarify that in assessing fine amounts the Board will give consideration to aggravating and mitigating circumstances such as the gravity of the violation, the good or bad faith of the person violating the provision, any history of previous violations, and evidence the violation was willful.

Adopt Section 34 of Title 16 of the California Code of Regulations.

Specific Purpose:

This regulatory action would adopt Section 34 to specify the penalties for failure to respond to Board inquiry pursuant to paragraph (5) of subdivision (e) of Business and Professions Code 5096. These penalties include issuance of a fine, issuance of an administrative suspension, and the requirement to obtain Board approval before commencing practice under a future practice privilege. Section 34 also provides that the factors listed in Section 95.3 will be considered in assessing fine amounts.

Factual Basis/Rationale:

While paragraph (5) of subdivision (e) of Business and Professions Code Section 5096 indicates that the practice privilege holder shall respond to a Board inquiry, it does not specify penalties for failure to respond. Adoption of Section 34 is necessary to establish a fine as a penalty for failure to respond. Adoption of Section 34 is also necessary to place in one location the penalties and related provisions associated with response to Board inquiry for clarity and ease of reference.

The range of fines is necessary to accommodate a variety of circumstances including the number of times the person failed to comply, the length of time the person failed to comply, the formality of the request (request versus subpoena), and the significance of the information withheld. The cross-reference to Section 95.3 is necessary to clarify that in assessing fine amounts the Board will give consideration to aggravating and mitigating circumstances such as the gravity of the violation, the good or bad faith of the person violating the provision, any history of previous violations, and evidence the violation was willful.

Adopt Section 35 of Title 16 of the California Code of Regulations.

Specific Purpose:

This proposal would add Section 35 to indicate that a practice privilege holder shall meet the continuing education requirement of the state of licensure identified in the Notification Form under Item 3 of the Qualification Requirements. This item reads: "I qualify for a practice privileged based on my current, valid license to practice public accountancy in the following state:..."

Factual Basis/Rationale:

Paragraph 2 of subdivision (e) of Business and Professions Code Section 5096 indicates that an individual is deemed, for the purposes of the practice privilege provisions, to have met California's continuing education and ethics examination requirements when the individual has met the examination and continuing education requirements of the state issuing the license upon which the substantial equivalency is

based. While any ethics examination is generally a one-time pre-licensure requirement, continuing education must be completed on an ongoing basis.

Since individuals may qualify for the California practice privilege by meeting one of the requirements specified in Section 27, adoption of Section 35 is necessary to clarify which state's continuing education requirements must be met for California practice privilege.

Adopt Section 35.1 of Title 16 of the California Code of Regulations.

Specific Purpose:

This proposal would add Section 35.1 to establish a procedure for issuance of the notice of intent to administratively suspend. Subsection (a) authorizes the Board's Executive Officer to issue a notice of intent to administratively suspend prior to issuance of an administrative suspension order pursuant to Business and Professions Code Section 5096.4. Subsection (a) indicates the notice shall be in writing and be mailed to the practice privilege holder's address of record. Subsection (b) indicates the notice shall include a description of the contents of the order. Subsection (c) indicates the notice shall also include a specified time period in which the practice privilege holder may respond in writing by showing cause why the administrative suspension order should not be issued. Subsection (d) indicates that the executive officer shall make a determination regarding issuing of the administrative suspension order and shall inform the practice privilege holder in writing of this determination.

Factual Basis/Rationale:

Current regulations do not address issuance of an administrative suspension order or notice of intent to administratively suspend. Adoption of Section 35.1 is necessary to establish in regulations provisions for the issuance of a notice of intent to administratively suspend.

Business and Professions Code Section 5096.4 provides for issuance of an administrative suspension order in order to conduct an inquiry concerning the representations made in the notice, the individual's competence to practice, failure to respond to board inquiry, and other conditions provided for in Board regulations. In considering this process, the Board concluded it would be desirable, in some instances, to notify the practice privilege holder of the intent to administratively suspend prior to issuance of the administrative suspension order. The purpose of this notice would be to provide the practice privilege holder with an opportunity to resolve the issue(s) prior to the issuance of the administrative suspension order and to thereby prevent an unnecessary disruption of the practice privilege. Issuance of a notice of intent to administratively suspend would be at the discretion of the executive officer.

Amend Section 70 of Title 16 of the California Code of Regulations.

Specific Purpose:

This proposal would amend Section 70 related to fees to incorporate the fee to be charged an individual for a California practice privilege. The amendment specifies a fee of \$100 for the practice privilege in California. In addition, an amendment to subsection (a) deletes paragraphs (1) and (2) pertaining to the paper-and-pencil CPA Examination.

Factual Basis/Rationale:

Section 70 is being amended to add subsection (h) which is necessary to provide for the fees for the new practice privilege process as specified in subdivision (i) of Section 5134 of the Business and Professions Code.

Additional revisions to Section 70 are necessary to delete paragraphs (1) and (2) of subsection (a) related to the paper-and-pencil CPA Examination. In 2004, the paper-and-pencil examination was replaced with a computerized version. Therefore, paragraphs (1) and (2) are outdated provisions.

Amend Section 98 of Title 16 of the California Code of Regulations.

Specific Purpose:

This proposal would amend Section 98 to incorporate by reference the 2005 edition of the California Board of Accountancy's "A Manual of Disciplinary Guidelines and Model Disciplinary Orders" (see [Attachment C](#)).

Factual Basis/Rationale:

Government Code Section 11425.50(e) states that penalties cannot be based on a guideline unless the guideline is adopted as a regulation. In conformance with that requirement, current Section 98 incorporates by reference the California Board of Accountancy's "A Manual of Disciplinary Guidelines and Model Disciplinary Orders" (6th edition, 2005).

Since the last edition of the disciplinary guidelines was issued, a number of statutory changes have occurred which are reflected in the updated guidelines. ([Attachment D](#) provides a summary of the statutory and regulatory changes reflected in the revised guidelines.) Further, Business and Professions Code Section 5116 (added by Chapter 921, Statutes of 2004) requires the Board to adopt regulations to establish criteria for assessing administrative penalties. These criteria are established through their inclusion in the 2005 edition of the disciplinary guidelines.

THE FOLLOWING APPLY TO THE PROPOSAL AS A WHOLE:

Underlying Data:

See the attachments referenced earlier in this document.

Business Impact:

The proposed regulatory action would have no significant statewide adverse economic impact on businesses. Instead, these regulations are likely to benefit California businesses by implementing the newly enacted practice privilege provisions which facilitate the responsible and expeditious cross-border movement of qualified CPAs from other states whose expertise is needed in California. These CPAs entering from other states will need to provide notice to the Board as described in Section 28 and pay the \$100 fee as provided in Sections 31 and 70. Violators of practice privilege requirements may incur fines as provided for by the regulations in this proposal.

Specific Technologies or Equipment:

These regulations do not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No reasonable alternative to these regulations would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.

Set forth below is a description of the alternative which was considered and the reasons it was rejected:

The Board considered two versions of the regulations (See [Attachment B](#) for the text of both versions considered by the Board.) The substance of both versions is identical, however the originally proposed text incorporates the actual Notification Form as part of Section 28. The alternative that was rejected by the Board (Attachment 1 of Attachment B) listed the elements to be included in the form, but did not include the form itself. The reason this version was rejected was because the Practice Privilege Task Force concluded that it was awkward and difficult to follow. The Board and representatives of the profession concurred with the Task Force's conclusion.

Senate Bill No. 1543

CHAPTER 921

An act to amend Sections 5000, 5015.6, 5076, 5100, 5109, 5134, and 22253.2 of, to amend, repeal, and add Sections 5050 and 5088 of, to add Sections 5025.2, 5025.3, 5063.3, and 22252.1 to, and to add Article 5.1 (commencing with Section 5096) and Article 6.5 (commencing with Section 5116) to Chapter 1 of Division 3 of, the Business and Professions Code, relating to professions and vocations, and making an appropriation therefor.

[Approved by Governor September 29, 2004. Filed
with Secretary of State September 30, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1543, Figueroa. California Board of Accountancy: tax preparers.

(1) Existing law provides for the licensing and regulation of accountants by the California Board of Accountancy in the Department of Consumer Affairs. The provisions creating the board, specifying the board's composition, and authorizing the board to appoint an executive officer become inoperative on July 1, 2005, and are repealed on January 1, 2006.

This bill would change these dates to provide that the provisions become inoperative on July 1, 2011, and are repealed on January 1, 2012. The bill would require the Department of Finance, notwithstanding specified provisions in the Budget Act, to authorize up to \$2,000,000 dollars in additional expenditures for the board's enforcement and litigation activities. The bill would require funds for these expenditures to be payable from the Accountancy Fund. The bill would authorize funds to be encumbered in any fiscal year in which the board enters into a contract for litigation or enforcement purposes, as specified. The bill would require funds encumbered for these purposes to be continuously appropriated. The bill would enact provisions authorizing an individual whose principal place of business is not in this state, and who has a valid and current license, certificate, or permit to practice public accountancy from another state, to engage in the practice of public accountancy in this state under certain conditions. The bill would also prohibit a licensed accountant from disclosing confidential information concerning a client or a prospective client without obtaining the client's written permission with specified exceptions. The bill would authorize the board to assess



specified administrative penalties and would require fees from those penalties to be deposited in the Accountancy Fund.

(2) Existing law requires a tax preparer, prior to rendering any tax preparation service, to provide a customer with specified information in writing. A violation of the laws regulating tax preparers is a crime.

This bill would prohibit a tax preparer from disclosing confidential information concerning a client or a prospective client without obtaining the client's written permission.

Because a violation of the bill by a tax preparer would be a crime, it would impose a state-mandated local program.

(3) Existing law authorizes the Franchise Tax Board, when it identifies an individual who has violated specific provisions regulating tax preparers, to notify the California Tax Education Council, which is required to notify the Attorney General, a district attorney, or a city attorney. Existing law authorizes these entities to cite a violating individual, levy a fine of up to \$1,000 per violation, and issue a cease and desist order.

This bill would instead require that the Franchise Tax Board notify the California Tax Education Council when it identifies a violation. The bill would delete the requirement that the council notify the Attorney General, a district attorney, or a city attorney. The bill instead would authorize the Franchise Tax Board, pursuant to a reimbursement agreement with the California Tax Education Council, to cite a violating individual, levy a fine of up to \$5,000 per violation, and issue a cease and desist order. The bill would prohibit the Franchise Tax Board from incurring costs associated with citing, levying a fine, or issuing a cease and desist order unless certain conditions are satisfied.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 5000 of the Business and Professions Code is amended to read:

5000. There is in the Department of Consumer Affairs the California Board of Accountancy, which consists of 15 members, seven of whom shall be licensees, and eight of whom shall be public members who shall



not be licentiates of the board or registered by the board. The board has the powers and duties conferred by this chapter.

The Governor shall appoint four of the public members, and the seven licensee members as provided in this section. The Senate Rules Committee and the Speaker of the Assembly shall each appoint two public members. In appointing the seven licensee members, the Governor shall appoint members representing a cross section of the accounting profession with at least two members representing a small public accounting firm. For the purposes of this chapter, a small public accounting firm shall be defined as a professional firm that employs a total of no more than four licensees as partners, owners, or full-time employees in the practice of public accountancy within the State of California.

This section shall become inoperative on July 1, 2011, and as of January 1, 2012, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2012, deletes or extends the dates on which this section becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473). However, the review of the board shall be limited to reports or studies specified in this chapter and those issues identified by the Joint Committee on Boards, Commissions, and Consumer Protection and the board regarding the implementation of new licensing requirements.

SEC. 2. Section 5015.6 of the Business and Professions Code is amended to read:

5015.6. The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 5025.2 is added to the Business and Professions Code, to read:

5025.2. (a) The Legislature finds that there are occasions when the California Board of Accountancy urgently requires additional expenditure authority in order to fund unanticipated enforcement and litigation activities. Without sufficient expenditure authority to obtain the necessary additional resources for urgent litigation and enforcement matters, the board is unable to adequately protect the public. Therefore, it is the intent of the Legislature that, apart from, and in addition to, the expenditure authority that may otherwise be established, the California



Board of Accountancy shall be given the increase in its expenditure authority in any given current fiscal year that is authorized by the Department of Finance pursuant to the provisions of subdivision (b) of this section, for costs and services in urgent litigation and enforcement matters, including, but not limited to, costs for professional and consulting services and for the services of the Attorney General and the Office of Administrative Hearings.

(b) Notwithstanding Control Section 27.00 of the annual Budget Act, Section 11006 of the Government Code, and the amount listed in the annual Budget Act for expenditure, the Department of Finance shall authorize up to two million dollars (\$2,000,000) in additional expenditures for the California Board of Accountancy upon a showing by the board that those funds are necessary for public protection and that the shortfall was not anticipated. These additional expenditures shall be payable from the Accountancy Fund for purposes of the board's litigation or enforcement activities in any given current fiscal year.

SEC. 4. Section 5025.3 is added to the Business and Professions Code, to read:

5025.3. (a) Whenever the board enters into a contract for litigation or enforcement purposes, including, but not limited to, contracts pursuant to Section 5025.1, funds may be encumbered in the fiscal year the contract is executed and expended at any time during the subsequent 24 months commencing with the last day of the fiscal year in which the contract is executed.

(b) Notwithstanding Section 13340 of the Government Code, funds encumbered for a contract pursuant to subdivision (a) of this section are continuously appropriated without regard to fiscal year, however, the appropriation is limited to the period for which funds are authorized to be encumbered under subdivision (a).

SEC. 5. Section 5050 of the Business and Professions Code is amended to read:

5050. (a) No person shall engage in the practice of public accountancy in this state unless such person is the holder of a valid permit to practice public accountancy issued by the board; provided, however, that nothing in this chapter shall prohibit a certified public accountant or a public accountant of another state, or any accountant of a foreign country lawfully practicing therein, from temporarily practicing in this state on professional business incident to his regular practice in another state or country.

(b) This section shall become inoperative on January 1, 2006, and as of that date is repealed.

SEC. 6. Section 5050 is added to the Business and Professions Code, to read:



5050. (a) No person shall engage in the practice of public accountancy in this state unless the person is the holder of a valid permit to practice public accountancy issued by the board or a holder of a practice privilege pursuant to Article 5.1 (commencing with Section 5096).

(b) This section shall become operative on January 1, 2006.

SEC. 7. Section 5063.3 is added to the Business and Professions Code, to read:

5063.3. (a) No confidential information obtained by a licensee, in his or her professional capacity, concerning a client or a prospective client shall be disclosed by the licensee without the written permission of the client or prospective client, except the following:

(1) Disclosures made by a licensee in compliance with a subpoena or a summons enforceable by order of a court.

(2) Disclosures made by a licensee regarding a client or prospective client to the extent the licensee reasonably believes it is necessary to maintain or defend himself or herself in a legal proceeding initiated by the client or prospective client.

(3) Disclosures made by a licensee in response to an official inquiry from a federal or state government regulatory agency.

(4) Disclosures made by a licensee or a licensee's duly authorized representative to another licensee in connection with a proposed sale or merger of the licensee's professional practice.

(5) Disclosures made by a licensee to either of the following:

(A) Another licensee to the extent necessary for purposes of professional consultation.

(B) Organizations that provide professional standards review and ethics or quality control peer review.

(6) Disclosures made when specifically required by law.

(7) Disclosures specified by the board in regulation.

(b) In the event that confidential client information may be disclosed to persons or entities outside the United States of America in connection with the services provided, the licensee shall inform the client in writing and obtain the client's written permission for the disclosure.

SEC. 8. Section 5076 of the Business and Professions Code is amended to read:

5076. (a) In order to renew its registration, a firm providing attest services, other than a sole proprietor or a small firm as defined in Section 5000, shall complete a peer review prior to the first registration expiration date after July 1, 2008, and no less frequently than every three years thereafter.

(b) For purposes of this article, the following definitions apply:



(1) “Peer review” means a study, appraisal, or review conducted in accordance with professional standards of the professional work of a licensee or registered firm by another licensee unaffiliated with the licensee or registered firm being reviewed. The peer review shall include, but not be limited to, a review of at least one attest engagement representing the highest level of service performed by the firm and may include an evaluation of other factors in accordance with requirements specified by the board in regulations.

(2) “Attest services” include an audit, a review of financial statements, or an examination of prospective financial information, provided, however, “attest services” shall not include the issuance of compiled financial statements.

(c) The board shall adopt regulations as necessary to implement, interpret, and make specific the peer review requirements in this section, including, but not limited to, regulations specifying the requirements for the approval of peer review providers, and regulations establishing a peer review oversight committee.

(d) The board shall review whether to implement the program specified in this section in light of the changes in federal and state law or regulations or professional standards, and shall report its findings to the Legislature and the department by September 1, 2005.

SEC. 9. Section 5088 of the Business and Professions Code is amended to read:

5088. (a) Any person who is the holder of a valid and unrevoked license as a certified public accountant issued under the laws of any state and who applies to the board for a license as a certified public accountant under the provisions of Section 5087 may, after application for licensure and after providing evidence of qualifying continuing education, perform the same public accounting services in this state as a certified public accountant licensed under Section 5092 or 5093 until the time his or her application for a license is granted or rejected.

(b) An applicant meeting the requirements of subdivision (a) who certifies that he or she has met the requirements of Section 5095 may perform attest services in this state until the time his or her application for a license is granted or rejected.

(c) This section shall remain operative until January 1, 2006, and as of that date is repealed.

SEC. 10. Section 5088 is added to the Business and Professions Code, to read:

5088. (a) Any individual who is the holder of a current and valid license as a certified public accountant issued under the laws of any state and who applies to the board for a license as a certified public accountant under the provisions of Section 5087 may, until the time the application

for a license is granted or denied, practice public accountancy in this state only under a practice privilege pursuant to the provisions of Article 5.1 (commencing with Section 5096), except that, for purposes of this section, the individual is not disqualified from a practice privilege during the period the application is pending by virtue of maintaining an office or principal place of business, or both, in this state. The board may by regulation provide for exemption, credit, or proration of fees to avoid duplication of fees.

(b) This section shall become operative on January 1, 2006.

SEC. 11. Article 5.1 (commencing with Section 5096) is added to Chapter 1 of Division 3 of the Business and Professions Code, to read:

Article 5.1. Practice Privileges

5096. (a) An individual whose principal place of business is not in this state and who has a valid and current license, certificate or permit to practice public accountancy from another state may, subject to the conditions and limitations in this article, engage in the practice of public accountancy in this state under a practice privilege without obtaining a certificate or license under this chapter if the individual satisfies one of the following:

(1) The individual has continually practiced public accountancy as a certified public accountant under a valid license issued by any state for at least four of the last ten years.

(2) The individual has a license, certificate, or permit from a state which has been determined by the board to have education, examination, and experience qualifications for licensure substantially equivalent to this state's qualifications under Section 5093.

(3) The individual possesses education, examination, and experience qualifications for licensure which have been determined by the board to be substantially equivalent to this state's qualifications under Section 5093.

(b) The board may designate states as substantially equivalent under paragraph (2) of subdivision (a) and may accept individual qualification evaluations or appraisals conducted by designated entities, as satisfying the requirements of paragraph (3) of subdivision (a).

(c) To obtain a practice privilege under this section, an individual who meets the requirements of subdivision (a), shall do the following:

(1) In the manner prescribed by board regulation, notify the board of the individual's intent to practice.

(2) Pay a fee as provided in Article 8 (commencing with Section 5130).



(d) Except as otherwise provided by this article or by board regulation, the practice privilege commences when the individual notifies the board, provided the fee is received by the board within 30 days of that date. The board shall permit the notification to be provided electronically.

(e) An individual who holds a practice privilege under this article:

(1) Is subject to the personal and subject matter jurisdiction and disciplinary authority of the board and the courts of this state.

(2) Shall comply with the provisions of this chapter, board regulations, and other laws, regulations, and professional standards applicable to the practice of public accountancy by the licensees of this state and to any other laws and regulations applicable to individuals practicing under practice privileges in this state except the individual is deemed, solely for the purpose of this article, to have met the continuing education requirements and ethics examination requirements of this state when such individual has met the examination and continuing education requirements of the state in which the individual holds the valid license, certificate, or permit on which the substantial equivalency is based.

(3) Shall not provide public accountancy services in this state from any office located in this state, except as an employee of a firm registered in this state. This paragraph does not apply to public accountancy services provided to a client at the client's place of business or residence.

(4) Is deemed to have appointed the regulatory agency of the state that issued the individual's certificate, license, or permit upon which substantial equivalency is based as the individual's agent on whom notices, subpoenas or other process may be served in any action or proceeding by the board against the individual.

(5) Shall cooperate with any board investigation or inquiry and shall timely respond to a board investigation, inquiry, request, notice, demand or subpoena for information or documents and timely provide to the board the identified information and documents.

(f) A practice privilege expires one year from the date of the notice, unless a shorter period is set by board regulation.

(g) (1) No individual may practice under a practice privilege without prior approval of the board if the individual has, or acquires at any time during the term of the practice privilege, any disqualifying condition under paragraph (2) of this subdivision.

(2) Disqualifying conditions include:

(A) Conviction of any crime other than a minor traffic violation.

(B) Revocation, suspension, denial, surrender or other discipline or sanctions involving any license, permit, registration, certificate or other authority to practice any profession in this or any other state or foreign



country or to practice before any state, federal, or local court or agency, or the Public Company Accounting Oversight Board.

(C) Pendency of any investigation, inquiry or proceeding by or before any state, federal or local court or agency, including, but not limited to, the Public Company Accounting Oversight Board, involving the professional conduct of the individual.

(D) Any judgment or arbitration award against the individual involving the professional conduct of the individual in the amount of thirty thousand dollars (\$30,000) or greater.

(E) Any other conditions as specified by the board in regulation.

(3) The board may adopt regulations exempting specified minor occurrences of the conditions listed in subparagraph (B) of paragraph (2) from being disqualifying conditions under this subdivision.

5096.1. (a) Any individual, not a licensee of this state, who is engaged in any act which is the practice of public accountancy in this state, and who has not given notice of intent to practice under practice privileges and paid the fee required pursuant to the provisions of this article, and who has a license, certificate or other authority to engage in the practice of public accountancy in any other state, regardless of whether active, inactive, suspended, or subject to renewal on payment of a fee or completion of an educational or ethics requirement, is:

(1) Deemed to be practicing public accountancy unlawfully in this state.

(2) Subject to the personal and subject matter jurisdiction and disciplinary authority of the board and the courts of this state to the same extent as a holder of a valid practice privilege.

(3) Deemed to have appointed the regulatory agency of the state that issued the individual's certificate or license as the individual's agent on whom notice, subpoenas, or other process may be served in any action or proceeding by the board against the individual.

(b) The board may prospectively deny a practice privilege to any individual who has violated this section or implementing regulations or committed any act which would be grounds for discipline against the holder of a practice privilege.

5096.2. (a) Practice privileges may be denied for failure to qualify under or comply with the provisions of this article or implementing regulations, or for any act that if committed by an applicant for licensure would be grounds for denial of a license under Section 480 or if committed by a licensee would be grounds for discipline under Section 5100, or for any act committed outside of this state that would be a violation if committed within this state.

(b) The board may deny practice privileges using either of the following procedures:

(1) Notifying the individual in writing of all of the following:

(A) That the practice privilege is denied.

(B) The reasons for denial.

(C) The earliest date on which the individual is eligible for a practice privilege.

(D) That the individual has a right to appeal the notice and request a hearing under the provisions of the Administrative Procedure Act if a written notice of appeal and request for hearing is made within 60 days.

(E) That, if the individual does not submit a notice of appeal and request for hearing within 60 days, the board's action set forth in the notice shall become final.

(2) Filing a statement of issues under the Administrative Procedure Act.

(c) An individual who had been denied a practice privilege may apply for a new practice privilege not less than one year after the effective date of the notice or decision denying the practice privilege unless a longer time period, not to exceed three years, is specified in the notice or decision denying the practice privilege.

5096.3. (a) Practice privileges are subject to revocation, suspension, fines or other disciplinary sanctions for any conduct that would be grounds for discipline against a licensee of the board or for any conduct in violation of this article or regulations implementing this article.

(b) Practice privileges are subject to discipline during any time period in which they are valid, under administrative suspension, or expired.

(c) The board may recover its costs pursuant to Section 5107 as part of any disciplinary proceeding against the holder of a practice privilege.

(d) An individual whose practice privilege has been revoked may apply for a new practice privilege not less than one year after the effective date of the board's decision revoking the individual's practice privilege unless a longer time period, not to exceed three years, is specified in the board's decision revoking the practice privilege.

(e) The provisions of the Administrative Procedure Act, including, but not limited to, the commencement of a disciplinary proceeding by the filing of an accusation by the board shall apply under this article.

5096.4. (a) The right of an individual to practice in this state under a practice privilege may be administratively suspended at any time by an order issued by the board or its executive officer, without prior notice or hearing, for the purpose of conducting a disciplinary investigation, proceeding, or inquiry concerning the representations made in the notice, the individual's competence or qualifications to practice under practice privileges, failure to timely respond to a board inquiry or request



for information or documents, or under other conditions and circumstances provided for by board regulation.

(b) The administrative suspension order is immediately effective when mailed to the individual's address of record or agent for notice and service as provided for in this article.

(c) The administrative suspension order shall contain the following:

(1) The reason for the suspension.

(2) A statement that the individual has the right, within 30 days, to appeal the administrative suspension order and request a hearing.

(3) A statement that any appeal hearing will be conducted under the provisions of the Administrative Procedure Act applicable to individuals who are denied licensure, including the filing of a statement of issues by the board setting forth the reasons for the administrative suspension of practice privileges and specifying the statutes and rules with which the individual must show compliance by producing proof at the hearing and in addition any particular matters that have come to the attention of the board and that would authorize the administrative suspension, or the denial of practice privileges.

(d) The burden is on the holder of the suspended practice privilege to establish both qualification and fitness to practice under practice privileges.

(e) The administrative suspension shall continue in effect until terminated by an order of the board or the executive officer or expiration of the practice privilege under administrative suspension.

(f) Administrative suspension is not discipline and shall not preclude any individual from applying for a license to practice public accountancy in this state or from applying for a new practice privilege upon expiration of the one under administrative suspension, except that the new practice privilege shall not be effective until approved by the board.

(g) Notwithstanding any administrative suspension, a practice privilege expires one year from the date of notice unless a shorter period is set by board regulation.

(h) Proceedings to appeal an administrative suspension order may be combined or coordinated with proceedings for denial or discipline of a practice privilege.

5096.5. Notwithstanding any other provision of this article, an individual may not sign any attest report pursuant to a practice privilege unless the individual meets the experience requirements of Section 5095 and completes any continuing education or other conditions required by the board regulations implementing this article.

5096.6. In addition to the authority otherwise provided for by this code, the board may delegate to the executive officer the authority to issue any notice or order provided for in this article and to act on behalf



of the board, including, but not limited to, issuing a notice of denial of a practice privilege and an interim suspension order, subject to the right of the individual to timely appeal and request a hearing as provided for in this article.

5096.7. Except as otherwise provided in this article, the following definitions apply:

(a) Anywhere the term “license,” “licensee,” “permit,” or “certificate” is used in this chapter or Division 1.5 (commencing with Section 475), it shall include persons holding practice privileges under this article, unless otherwise inconsistent with the provisions of the article.

(b) Any notice of practice privileges under this article and supporting documents is deemed an application for licensure for purposes of the provisions of this code, including, but not limited to, the provisions of this chapter and the provisions of Division 1.5 (commencing with Section 475) related to the denial, suspension and revocation of licenses.

(c) Anywhere the term “employee” is used in this article it shall include, but is not limited to, partners, shareholders, and other owners.

5096.8. In addition to the authority otherwise provided by this code, all investigative powers of the board, including those delegated to the executive officer, shall apply to investigations concerning compliance with, or actual or potential violations of, the provisions of this article or implementing regulations, including, but not limited to, the power to conduct investigations and hearings by the executive officer under Section 5103 and to issuance of subpoenas under Section 5108.

5096.9. The board is authorized to adopt regulations to implement, interpret, or make specific the provisions of this article.

5096.10. The provisions of this article shall only be operative if commencing July 1, 2005, and continuing during the period provided in Section 5096.11, there is an appropriation from the Accountancy Fund in the annual Budget Act to fund the activities in the article and sufficient hiring authority is granted pursuant to a budget change proposal to the board to provide staffing to implement this article.

5096.11. This article shall become operative on January 1, 2006. It shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2011, deletes or extends that date.

SEC. 12. Section 5100 of the Business and Professions Code is amended to read:

5100. After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for



unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

(a) Conviction of any crime substantially related to the qualifications, functions and duties of a certified public accountant or a public accountant.

(b) A violation of Section 478, 498, or 499 dealing with false statements or omissions in the application for a license, in obtaining a certificate as a certified public accountant, in obtaining registration under this chapter, or in obtaining a permit to practice public accountancy under this chapter.

(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same or different engagements, for the same or different clients, or any combination of engagements or clients, each resulting in a violation of applicable professional standards that indicate a lack of competency in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052.

(d) Cancellation, revocation, or suspension of a certificate or other authority to practice as a certified public accountant or a public accountant, refusal to renew the certificate or other authority to practice as a certified public accountant or a public accountant, or any other discipline by any other state or foreign country.

(e) Violation of Section 5097.

(f) Violation of Section 5120.

(g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.

(h) Suspension or revocation of the right to practice before any governmental body or agency.

(i) Fiscal dishonesty or breach of fiduciary responsibility of any kind.

(j) Knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information.

(k) Embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses.

(l) The imposition of any discipline, penalty, or sanction on a registered public accounting firm or any associated person of such firm, or both, or on any other holder of a permit, certificate, license, or other authority to practice in this state, by the Public Company Accounting Oversight Board or the United States Securities and Exchange Commission, or their designees under the Sarbanes-Oxley Act of 2002 or other federal legislation.

(m) Unlawfully engaging in the practice of public accountancy in another state.



SEC. 13. Section 5109 of the Business and Professions Code is amended to read:

5109. The expiration, cancellation, forfeiture, or suspension of a license, practice, privilege, or other authority to practice public accountancy by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of or action or disciplinary proceeding against the licensee, or to render a decision suspending or revoking the license.

SEC. 14. Article 6.5 (commencing with Section 5116) is added to Chapter 1 of Division 3 of the Business and Professions Code, to read:

Article 6.5. Administrative Penalties

5116. (a) The board, after appropriate notice and an opportunity for hearing, may order any licensee or applicant for licensure or examination to pay an administrative penalty as provided in this article as part of any disciplinary proceeding or other proceeding provided for in this chapter.

(b) The board may assess administrative penalties under one or more provisions of this article. However, the total administrative penalty to be paid by the licensee shall not exceed the amount of the highest administrative penalty authorized by this article.

(c) The board shall adopt regulations to establish criteria for assessing administrative penalties based upon factors, including, but not limited to, actual and potential consumer harm, nature and severity of the violation, the role of the person in the violation, the person's ability to pay the administrative penalty, and the level of administrative penalty necessary to deter future violations of this chapter.

(d) Administrative penalties assessed under this article shall be in addition to any other penalties or sanctions imposed on the licensee or other person, including, but not limited to, license revocation, license suspension, denial of the application for licensure, denial of the petition for reinstatement, or denial of admission to the licensing examination. Payment of these administrative penalties may be included as a condition of probation when probation is ordered.

(e) All administrative penalties collected under this article shall be deposited in the Accountancy Fund.

5116.1. In accordance with Section 5116 and applicable regulations, except as provided in Section 5116.2, any licensee who violates any provision of this chapter may be assessed an administrative penalty of not more than five thousand dollars (\$5,000) for the first violation and not more than ten thousand dollars (\$10,000) for each subsequent violation.



5116.2. In accordance with Section 5116 and applicable regulations, any licensee who violates subdivision (a), (c), (i), (j) or (k) of Section 5100 may be assessed an administrative penalty of not more than one million dollars (\$1,000,000) for the first violation and not more than five million dollars (\$5,000,000) for any subsequent violation, except that a licensee who is a natural person may be assessed an administrative penalty of not more than fifty thousand dollars (\$50,000) for the first violation and not more than one hundred thousand dollars (\$100,000) for any subsequent violation.

5116.3. In accordance with Section 5116 and applicable regulations, any person who is found to have cheated or subverted or attempted to subvert or cheat on any licensing examination or who conspired with or aided or abetted any other person to cheat, subvert or attempt to subvert any examination may be assessed an administrative penalty of not more than five thousand dollars (\$5,000) for the first violation and not more than ten thousand dollars (\$10,000) for each subsequent violation.

5116.4. (a) The board's executive officer may request assessment of an administrative penalty in any disciplinary or other proceeding provided in this chapter or in any notice to an applicant pursuant to Section 5112.

(b) The administrative penalty pursuant to subdivision (a) shall become final unless contested within the time period provided for the filing of a notice of appeal, for the filing of a notice of defense, or for requesting a hearing in the proceeding.

(c) Nothing in this article shall prevent an administrative penalty from being included in a final contested or default decision of the board or in a notice issued pursuant to Section 5112 once the time period for requesting a hearing has expired.

5116.5. The board may obtain a judgment in any court of competent jurisdiction ordering the payment of any final administrative penalty assessed by the board pursuant to this article upon the filing of a certified copy of the board's final decision or notice issued pursuant to Section 5112.

5116.6. Anywhere the term "licensee" is used in the article it shall include certified public accountants, public accountants, partnerships, corporations, holders of practice privileges, other persons licensed, registered, or otherwise authorized to practice public accountancy under this chapter, and persons who are in violation of any provision of Article 5.1 (commencing with Section 5096).

SEC. 15. Section 5134 of the Business and Professions Code is amended to read:

5134. The amount of fees prescribed by this chapter is as follows:



(a) The fee to be charged to each applicant for the certified public accountant examination shall be fixed by the board at an amount to equal the actual cost to the board of the purchase or development of the examination, plus the estimated cost to the board of administering the examination and shall not exceed six hundred dollars (\$600). The board may charge a reexamination fee equal to the actual cost to the board of the purchase or development of the examination or any of its component parts, plus the estimated cost to the board of administering the examination and not to exceed seventy-five dollars (\$75) for each part that is subject to reexamination.

(b) The fee to be charged to out-of-state candidates for the certified public accountant examination shall be fixed by the board at an amount equal to the estimated cost to the board of administering the examination and shall not exceed six hundred dollars (\$600) per candidate.

(c) The application fee to be charged to each applicant for issuance of a certified public accountant certificate shall be fixed by the board at an amount equal to the estimated administrative cost to the board of processing and issuing the certificate and shall not exceed two hundred fifty dollars (\$250).

(d) The application fee to be charged to each applicant for issuance of a certified public accountant certificate by waiver of examination shall be fixed by the board at an amount equal to the estimated administrative cost to the board of processing and issuing the certificate and shall not exceed two hundred fifty dollars (\$250).

(e) The fee to be charged to each applicant for registration as a partnership or professional corporation shall be fixed by the board at an amount equal to the estimated administrative cost to the board of processing and issuing the registration and shall not exceed two hundred fifty dollars (\$250).

(f) The board shall fix the biennial renewal fee so that, together with the estimated amount from revenue other than that generated by subdivisions (a) to (e), inclusive, the reserve balance in the board's contingent fund shall be equal to approximately nine months of annual authorized expenditures. Any increase in the renewal fee made after July 1, 1990, shall be effective upon a determination by the board, by regulation adopted pursuant to subdivision (k), that additional moneys are required to fund authorized expenditures other than those specified in subdivisions (a) to (e), inclusive, and maintain the board's contingent fund reserve balance equal to nine months of estimated annual authorized expenditures in the fiscal year in which the expenditures will occur. The biennial fee for the renewal of each of the permits to engage in the practice of public accountancy specified in Section 5070 shall not exceed two hundred fifty dollars (\$250).



(g) The delinquency fee shall be 50 percent of the accrued renewal fee.

(h) The initial permit fee is an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the permit is issued, except that, if the permit is issued one year or less before it will expire, then the initial permit fee is an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the permit is issued. The board may, by regulation, provide for the waiver or refund of the initial permit fee where the permit is issued less than 45 days before the date on which it will expire.

(i) On and after January 1, 2006, the annual fee to be charged an individual for a practice privilege pursuant to Section 5096 shall be fixed by the board at an amount not to exceed 50 percent of the biennial renewal fee provided in subdivision (f).

(j) The fee to be charged for the certification of documents evidencing passage of the certified public accountant examination, the certification of documents evidencing the grades received on the certified public accountant examination, or the certification of documents evidencing licensure shall be twenty-five dollars (\$25).

(k) The actual and estimated costs referred to in this section shall be calculated every two years using a survey of all costs attributable to the applicable subdivision.

(l) Upon the effective date of this section the board shall fix the fees in accordance with the limits of this section and, on and after July 1, 1990, any increase in any fee fixed by the board shall be pursuant to regulation duly adopted by the board in accordance with the limits of this section.

(m) Fees collected pursuant to subdivisions (a) to (e), inclusive, shall be fixed by the board in amounts necessary to recover the actual costs of providing the service for which the fee is assessed, as projected for the fiscal year commencing on the date the fees become effective.

SEC. 16. Section 22252.1 is added to the Business and Professions Code, to read:

22252.1. (a) No confidential information obtained by a tax preparer, in his or her professional capacity, concerning a client or a prospective client shall be disclosed by the tax preparer without the written permission of the client or prospective client, except for the following:

(1) Disclosures made by a tax preparer in compliance with a subpoena or a summons enforceable by order of a court.

(2) Disclosures made by a tax preparer regarding a client or prospective client to the extent the tax preparer reasonably believes it is

necessary to maintain or defend himself or herself in a legal proceeding initiated by the client or prospective client.

(3) Disclosures made by a tax preparer in response to an official inquiry from a federal or state government regulatory agency.

(4) Disclosures made by a tax preparer or to a tax preparer's duly authorized representative to another tax preparer in connection with a proposed sale or merger of the tax preparer's professional practice.

(5) Disclosures made by a tax preparer to either of the following:

(A) Another tax preparer to the extent necessary for purposes of professional consultation.

(B) Organizations that provide professional standards review and ethics or quality control peer review.

(6) Disclosures made when specifically required by law.

(b) In the event that confidential client information may be disclosed to persons or entities outside the United States of America in connection with the services provided, the tax preparer shall inform the client in writing and obtain the client's written permission for the disclosure.

(c) It is the intent of the Legislature that this section complement and does not replace Section 17530.5 as applied to tax preparers by subdivision (f) of Section 1799.1a of the Civil Code.

SEC. 17. Section 22253.2 of the Business and Professions Code is amended to read:

22253.2. (a) The Franchise Tax Board shall notify the California Tax Education Council when it identifies an individual who has violated paragraph (1) of subdivision (a) of Section 22253.

(b) The Franchise Tax Board pursuant to an agreement with the California Tax Education Council, as authorized in subdivision (c), may do any of the following:

(1) Cite individuals preparing tax returns in violation of subdivision (a) of Section 22253.

(2) Levy a fine up to five thousand dollars (\$5,000) per violation.

(3) Issue a cease and desist order, which shall remain in effect until the individual has come into compliance with the provisions of paragraph (1) of subdivision (a) of Section 22253.

(c) The California Tax Education Council may enter into an agreement with the Franchise Tax Board to provide reimbursement to the Franchise Tax Board for any expenses incurred by the Franchise Tax Board to implement subdivision (a) of this section.

(d) The Franchise Tax Board shall not incur any costs associated with any of the activities authorized by subdivision (b) until either one of the following has occurred:



(1) Commencing January 1, 2006, and continuing each year thereafter, there is an appropriation in the Franchise Tax Board's annual budget to fund the activities authorized by subdivision (b).

(2) (A) An agreement has been executed between the California Tax Education Council and the Franchise Tax Board that provides that an amount equal to all first year costs necessary to implement and administer the activities authorized by subdivision (b) shall be received by the Franchise Tax Board. For purposes of this paragraph, first year costs include costs associated with, but not limited to, the development of processes or systems changes if necessary, and labor.

(B) An agreement has been executed between the California Tax Education Council and the Franchise Tax Board that provides that the annual costs incurred by the Franchise Tax Board as a result of the activities authorized by subdivision (b) shall be reimbursed by the California Tax Education Council to the Franchise Tax Board.

(C) Pursuant to the agreement described in subparagraph (A), the Franchise Tax Board has received an amount equal to the first year costs.

SEC. 18. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

